U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 29 2013 Office: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petitioner asserts that the beneficiary qualifies for Schedule A, Group I classification. As required by statute, the petitioner submitted a U.S. Department of Labor ETA Form 9089, Application for Permanent Employment Certification. The director determined that the petitioner had not established the ability to pay the beneficiary in 2010. On May 1, 2013, the AAO sent the petitioner a request for evidence to the petitioner to establish its "ability to pay the proffered wage for each I-140 beneficiary" for whom the petitioner had filed and demonstrate that the beneficiary in the instant petition "has the required 5 years of progressive experience."

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has complied with the regulatory requirements for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" in pertinent part as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

II. ANALYSIS

On the ETA Form 9089, Part H, the petitioner indicated that either a master's degree in physical therapy (or a foreign educational equivalent) or a bachelor's degree in physical therapy (or a foreign educational equivalent) plus five years of progressive experience in the job offered are the requirements for the offered position.

The beneficiary in this matter holds a Bachelor of Science in Physical Therapy from which has been determined to be the equivalent of a U.S. bachelor's degree. In addition, the beneficiary has been employed as a physical therapist for more than five years in progressively responsible positions.

III. ABILITY TO PAY

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which for this particular petition is April 13, 2012.[1] *See* 8 C.F.R. § 204.5(d). After a review of the beneficiary's 2012 Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement, the petitioner's 2012 IRS Form 1120S U.S. Income Tax Return for a Subchapter S Corporation and other evidence in the record, the petitioner has provided sufficient evidence of the ability to pay the salary offered as of the priority date of this petition and continuing to present.

IV. CONCLUSION

The petitioner has submitted sufficient evidence to establish that the beneficiary is eligible for the classification sought. Specifically, upon careful review of the record, it is concluded that the petitioner has demonstrated by a preponderance of the evidence that the beneficiary possesses the required foreign equivalent bachelor's degree and more than five years of progressive, post-baccalaureate experience as a physical therapist. In addition, the record contains sufficient evidence of the petitioner's ability to pay the proffered wage.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.

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[1] The priority date of April 13, 2012 is the priority date for this petition and does not take into account whether the beneficiary may be entitled to retain an earlier priority date from a previous petition filed by a former employer pursuant to 8 C.F.R. § 204.5(e).